

AMENDED IN ASSEMBLY MAY 28, 2009

AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 556

**Introduced by Committee on Judiciary (Senators Corbett (Chair),
Flores, Harman, Leno, and Walters)**

February 27, 2009

An act to amend Section 116.820 of the Code of Civil Procedure, to amend Section 68084.1 of the Government Code, *to amend Section 3140 of the Probate Code*, and to amend Section 19280 of the Revenue and Taxation Code, relating to courts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Committee on Judiciary. Courts.

(1) Existing law provides that the judgment of a small claims court may be enforced as provided for the enforcement of judgments of other courts. Existing law requires the clerk of the small claims court to charge and collect specified fees for the issuance of a writ of execution or an abstract of judgment, and for an application for an order of examination of a judgment debtor.

This bill would require the clerk of the small claims court to charge and collect all fees associated with the enforcement of small claims court judgments, including, among other things, statutory fees for preparing and issuing, and recording and indexing, an abstract of judgment or a certified copy of a judgment, statutory fees for filing a notice of judgment lien on personal property, and statutory fees for issuing a writ for the enforcement of the judgment, as specified.

(2) Existing law provides that any money in a court bank account or in a court trust account in a county treasury that remains unclaimed for

3 years shall become the property of the superior court if, after published notice, the money is not claimed or no verified complaint is filed and served. Existing law provides that if a claim is filed and rejected, or no action is taken on it, the party who submitted the claim may file a verified complaint seeking to recover all, or a specified part, of the money. Existing law establishes the State Restitution Fund, which is continuously appropriated for indemnifying victims of crime.

This bill would provide that money representing restitution collected on behalf of victims that remains unclaimed for 3 years shall be deposited into the State Restitution Fund. By depositing moneys into the State Restitution Fund, this bill would make an appropriation.

(3) Existing law requires a conservator served pursuant to specified provisions of law to appear at a hearing and represent a spouse alleged to lack legal capacity for a proposed transaction involving community property. Existing law authorizes the court, in its discretion, to appoint an investigator to review the proposed transaction and report to the court regarding its advisability.

This bill would limit the authority of the court to appoint an investigation pursuant to that provision to those cases in which the appointment is necessary. The bill would authorize the court to order the cost of the review and report by a court investigator to be paid out of the proceeds of the transaction or otherwise as the court may direct, if the court determines that its order would not cause a hardship.

~~(3)~~

(4) Existing law provides that delinquent fines, state or local penalties, forfeitures, restitution fines and orders, and any other amounts imposed by a superior court upon a person or entity for criminal offenses, that total at least \$100 in the aggregate, may be referred by the court, county, or state to the Franchise Tax Board for collection, as specified.

This bill would additionally authorize the referral of delinquent bail amounts imposed by a superior court to the Franchise Tax Board for collection pursuant to this provision.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 116.820 of the Code of Civil Procedure
2 is amended to read:

1 116.820. (a) The judgment of a small claims court may be
2 enforced as provided in Title 9 (commencing with Section 680.010)
3 of Part 2 and in Sections 674 and 1174 on the enforcement of
4 judgments of other courts. A judgment of the superior court after
5 a hearing on appeal, and after transfer to the small claims court
6 under subdivision (d) of Section 116.780, may be enforced like
7 other judgments of the small claims court, as provided in Title 9
8 (commencing with Section 680.010) of Part 2 and in Sections 674
9 and 1174 on the enforcement of judgments of other courts.

10 (b) The clerk of the court shall charge and collect all fees
11 associated with the enforcement of judgments under Title 9
12 (commencing with Section 680.010) of Part 2. The clerk shall
13 immediately deposit all the fees collected under this section into
14 a bank account established for this purpose by the Administrative
15 Office of the Courts. The money shall be remitted to the State
16 Treasury under rules adopted by, or trial court financial policies
17 and procedures authorized by, the Judicial Council under
18 subdivision (a) of Section 77206 of the Government Code. The
19 Controller shall distribute the fees to the Trial Court Trust Fund
20 as provided in Section 68085.1 of the Government Code.

21 (c) The prevailing party in any action subject to this chapter is
22 entitled to the costs of enforcing the judgment and accrued interest.

23 SEC. 2. Section 68084.1 of the Government Code is amended
24 to read:

25 68084.1. (a) Except as otherwise provided by law, any money,
26 excluding restitution to victims, that has been deposited with a
27 superior court, or that a superior court is holding in trust for the
28 lawful owner, in a court bank account or in a court trust account
29 in a county treasury, that remains unclaimed for three years shall
30 become the property of the superior court if, after published notice
31 pursuant to this section, the money is not claimed or no verified
32 complaint is filed and served. Money representing restitution
33 collected on behalf of victims that remains unclaimed for three
34 years shall be deposited into the State Restitution Fund.

35 (b) At any time after the expiration of the three-year period
36 specified in subdivision (a), the executive officer of the superior
37 court may cause a notice to be published once a week for two
38 successive weeks in a newspaper of general circulation published
39 in the county in which the court is located. The notice shall state
40 the amount of money, the fund in which it is held, and that it is

1 proposed that the money will become the property of the court on
2 a designated date not less than 45 days nor more than 60 days after
3 the first publication of the notice.

4 (c) Before or after publication, a party of interest may file a
5 claim with the court executive officer that shall include the
6 claimant's name, address, amount of claim, the grounds on which
7 the claim is founded, and any other information that may be
8 required by the court executive officer. The claim shall be filed
9 before the designated date on which unclaimed money becomes
10 the property of the court as provided under subdivision (b), and
11 the executive officer shall accept or reject that claim.

12 (d) If the superior court executive officer rejects the claim, or
13 takes no action on the claim within 30 days after it is filed, the
14 party that submitted the claim may file a verified complaint seeking
15 to recover all, or a specified part, of the money in the court in the
16 county in which the notice is published. The copy of the complaint
17 and summons shall be served on the court executive officer. The
18 court executive officer shall withhold the release of the portion of
19 unclaimed money for which a court action has been filed as
20 provided in this section until the court renders a decision or the
21 claim is settled. Any portion of the unclaimed money not covered
22 by the verified complaint shall become the property of the court
23 if no other claim or verified complaint has been filed regarding it
24 within the time specified in this section. If the party that submitted
25 the claim does not file a verified complaint within 30 days after
26 the date that the court mailed notice that the claim was rejected or
27 within 60 days after the claim was filed, the money shall become
28 the property of the court.

29 (e) Notwithstanding subdivisions (c) and (d), the court executive
30 officer may release the unclaimed money to the depositor of the
31 unclaimed money, or the depositor's heir, beneficiary, or duly
32 appointed representative, if the depositor or the depositor's heir,
33 beneficiary, or duly appointed representative claims the money
34 before the date that the money becomes the property of the superior
35 court, upon submitting proof satisfactory to the court executive
36 officer.

37 (f) If no claim is filed under subdivision (c) and the time for
38 filing claims has expired, the money shall become the property of
39 the court. If a claim or claims are filed with respect to a portion of
40 the money, but not the remainder of the money, and the time for

1 filing claims under subdivision (c) has expired, the remainder of
2 the money shall become the property of the court.

3 (g) Notwithstanding any other provision of this section, the
4 presiding judge may direct the transfer of any individual deposit
5 of twenty dollars (\$20) or less, or any amount if the name of the
6 original depositor is unknown, that remains unclaimed for one
7 year to the Trial Court Operations Fund without the need for
8 publication of notice.

9 (h) The court executive officer may delegate the responsibilities
10 provided in this section to appropriate superior court staff.

11 (i) When any money deposited and held under this section
12 becomes the property of a superior court, the presiding judge shall
13 transfer it to the Trial Court Operations Fund.

14 *SEC. 3. Section 3140 of the Probate Code is amended to read:*

15 3140. (a) A conservator served pursuant to this article shall,
16 and the Director of Mental Health or the Director of Developmental
17 Services given notice pursuant to Section 1461 may, appear at the
18 hearing and represent a spouse alleged to lack legal capacity for
19 the proposed transaction.

20 (b) The court may, in its discretion *and if necessary*, appoint an
21 investigator to review the proposed transaction and report to the
22 court regarding its advisability.

23 (c) If the court determines that a spouse alleged to lack legal
24 capacity has not competently retained independent counsel, the
25 court may in its discretion appoint the public guardian, public
26 administrator, or a guardian ad litem to represent the interests of
27 the spouse.

28 (d) (1) If a spouse alleged to lack legal capacity is unable to
29 retain legal counsel, upon request of the spouse, the court shall
30 appoint the public defender or private counsel under Section 1471
31 to represent the spouse and, if that appointment is made, Section
32 1472 applies.

33 (2) If the petition proposes a transfer of substantial assets to the
34 petitioner from the other spouse and the court determines that the
35 spouse has not competently retained independent counsel for the
36 proceeding, the court may, in its discretion, appoint counsel for
37 the other spouse if the court determines that appointment would
38 be helpful to resolve the matter or necessary to protect the interests
39 of the other spouse.

(e) Except as provided in subdivision paragraph (1) of subdivision (d), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.

(f) *The court may order the cost of the review and report by a court investigator pursuant to subdivision (b) to be paid out of the proceeds of the transaction or otherwise as the court may direct, if the court determines that its order would not cause a hardship.*

~~SEC. 3.~~

SEC. 4. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Unless the victim of the crime notifies the Department of Corrections and Rehabilitation to the contrary, the Department of Corrections and Rehabilitation may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include an administrative fee and any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

1 (i) The government entity has the authority to collect on behalf
2 of the state or the victim.

3 (ii) The government entity shall be responsible for distributing
4 the restitution order collections, as appropriate.

5 (iii) The government entity shall ensure, in making the referrals
6 and distributions, that it coordinates with any other related
7 collection activities that may occur by superior courts, counties,
8 or other state agencies.

9 (iv) The government entity shall ensure compliance with laws
10 relating to the reimbursement of the State Restitution Fund.

11 (C) The Franchise Tax Board shall establish criteria for referral,
12 which shall include setting forth a minimum dollar amount subject
13 to referral and collection.

14 (b) The Franchise Tax Board, in conjunction with the Judicial
15 Council, shall seek whatever additional resources are needed to
16 accept referrals from all 58 counties or superior courts.

17 (c) Upon written notice to the debtor from the Franchise Tax
18 Board, any amount referred to the Franchise Tax Board under
19 subdivision (a) and any interest thereon, including any interest on
20 the amount referred under subdivision (a) that accrued prior to the
21 date of referral, shall be treated as final and due and payable to the
22 State of California, and shall be collected from the debtor by the
23 Franchise Tax Board in any manner authorized under the law for
24 collection of a delinquent personal income tax liability, including,
25 but not limited to, issuance of an order and levy under Article 4
26 (commencing with Section 706.070) of Chapter 5 of Division 2
27 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
28 provided for earnings withholding orders for taxes.

29 (d) (1) Part 10 (commencing with Section 17001), this part,
30 Part 10.7 (commencing with Section 21001), and Part 11
31 (commencing with Section 23001) shall apply to amounts referred
32 under this article in the same manner and with the same force and
33 effect and to the full extent as if the language of those laws had
34 been incorporated in full into this article, except to the extent that
35 any provision is either inconsistent with this article or is not
36 relevant to this article.

37 (2) Any information, information sources, or enforcement
38 remedies and capabilities available to the court or the state referring
39 to the amount due described in subdivision (a), shall be available
40 to the Franchise Tax Board to be used in conjunction with, or

1 independent of, the information, information sources, or remedies
2 and capabilities available to the Franchise Tax Board for purposes
3 of administering Part 10 (commencing with Section 17001), this
4 part, Part 10.7 (commencing with Section 21001), or Part 11
5 (commencing with Section 23001).

6 (e) The activities required to implement and administer this part
7 shall not interfere with the primary mission of the Franchise Tax
8 Board to administer Part 10 (commencing with Section 17001)
9 and Part 11 (commencing with Section 23001).

10 (f) For amounts referred for collection under subdivision (a),
11 interest shall accrue at the greater of the rate applicable to the
12 amount due being collected or the rate provided under Section
13 19521. When notice of the amount due includes interest and is
14 mailed to the debtor and the amount is paid within 15 days after
15 the date of notice, interest shall not be imposed for the period after
16 the date of notice.

17 (g) In no event shall a collection under this article be construed
18 as a payment of income taxes imposed under Part 10 (commencing
19 with Section 17001) or Part 11 (commencing with Section 23001).